*THE HONOURABLE SRI JUSTICE P.S.NARAYANA

+WRIT PETITION NO.20129 OF 2006

%11-12-2007

M.Jayanna …Petitioner

Vs.

$ The Joint Collector, Kurnool,
Kurnool District and three others

…Respondents

!Counsel for the petitioner :Sri R.Ramanjaneyulu
^Counsel for respondents 1 to 3 :Assistant Government Pleader for Civil Supplies
^Counsel for respondent No.4 :Sri A.Chandraiah Naidu

<Gist :
>Head Note:

?Cases Referred:

1.1997 (2) ALD 437
2.1997 (4) ALT 481

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.20129 of 2006

Date: 11-12-2007

Between:

M.Jayanna

..... PETIT

AND

The Joint Collector,
Kurnool, Kurnool District and 3 others.

.....RESPO

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.20129 of 2006

O R D E R:

1. Heard Sri R.Ramanjaneyulu, learned counsel representing the writ petitioner, learned Assistant Government Pleader for Civil Supplies representing respondent Nos. 1 to 3 and Sri A.Chandraiah Naidu, learned counsel representing respondent No.4.

2. Sri M.Jayanna, the writ petitioner, filed the present writ petition praying to declare the action of the respondents herein in bifurcating the Fair Price Shop of Chandoli village, Pathikonda Mandal, Kurnool District behind the back of the petitioner and subsequent orders, pursuant to the above bifurcation order to Fair Price Shop of Chandoli village as illegal, improper, arbitrary and violative of principles of natural justice and Articles 14, 19 and 21 of the Constitution of India.

3. Respondent No.4 was impleaded as party by virtue of order made by this Court dated 27-11-2007 in W.P.M.P.No.30472 of 2006. This Court issued Rule nisi on 26-09-2006 and in W.P.M.P.No.25415 of 2006 granted interim suspension for limited period and the same was extended until further orders on

12-10-2006. W.V.M.P.No.2402 of 2006 was filed by respondent No.4 to vacate the interim order.

4. Sri R.Ramanjaneyulu, learned counsel appearing for the petitioner had taken this Court through the affidavit filed in support of the writ petition and would maintain that the impugned declaration had been effected without issuing any notice to the petitioner and that without following any guidelines whatsoever governing the field. The learned counsel also demonstrated how the impugned action is violative of the specific guidelines and the distance, the number of cards and also lack of economic viability.

5. The learned Assistant Government Pleader for Civil Supplies had taken this Court through the contents of the counter affidavit and would maintain that even in cases where the number of cards may be less, taking the peculiar situation like in a case of faction village, such declaration may be effected in

public interest. The learned Assistant Government Pleader had also taken this Court through the relevant guidelines in this regard.

6. Sri A.Chandraiah Naidu, learned counsel representing respondent No.4, had taken this Court through the counter affidavit and also would maintain that the writ petitioner has no legal right whatsoever to question the impugned action. Further, the learned counsel had also placed endorsement of the Tahsildar, dated 25-06-2007, which would go to show that at present the cards are 401. In the light of the same, the ground raised by the petitioner, relating to the number of cards also not maintainable. Even otherwise, the learned counsel would maintain that in the light of the decision of this Court in **THIRUVEEDHI NAGENDRA RAO V. DISTRICT COLLECTOR, PRAKASAM DISTRICT**[1], the writ petition is liable to be dismissed.

7. The petitioner states that he has been working as Fair Price shop dealer of Chandoli village since more than 10 years. Previously one Harijana Anjanaiah was the dealer of the village and after his resignation, petitioner was appointed as fair price shop dealer under Scheduled Caste quota as the village was reserved for Scheduled Caste candidates. Ever since the appointment, the petitioner has been distributing the commodities supplied by the Government regularly to the cardholders without any remarks from any quarter whatsoever. Further it is stated that the village in question is a small village having 217 cardholders and his shop is in the west of the village, which is less than half furlong to all the cardholders. Now it is not a faction village. All the communities are living very peacefully and amicably to each other. No social or caste tensions prevailed and there are no criminal cases on the villagers since more than 15 years. While the matter stood thus, on 30-05-2006 a news item appeared in Eenadu, Kurnool District Special, wherein the Mandal Revenue Officer, Pathikonda stated that ‘a ration shop was granted to Chandoli village, Pathikonda Mandal’ and a new dealer was appointed. The appointment was made on the request of the villagers and resolution of Assignment Committee. On seeing the said news item, the petitioner approached the M.R.O, Pathikonda and enquired about the appointment of new dealer, after bifurcating the existing fair price shop at Chandoli village. But he refused to give any information about the news item that was published in Eenadu, Kurnool District Special on 30-05-2006. The petitioner gave an application requesting to give order of appointment of new

dealer and bifurcation order, if any, under Right to Information Act. Then the M.R.O. supplied xerox copy of bifurcation order dated 16-01-2006, which was passed very long back without notice to the petitioner, though he was an affected person. But the M.R.O. kept quite till recently and only commodities were supplying to the petitioner. It is further submitted by the petitioner that the M.L.A. of Pathikonda is belonging to Telugu Desam Party whereas all the people of the village are supporter of Congress since from his forefathers. At the behest of the M.L.A., the impugned order was passed, which is against the guidelines envisaged in Government Memo No.148/C.S.1/9G-1 dated 22-01-1999. The guidelines enumerated in the said Government Memo are extracted hereunder:

1. Each and every village should have a separate fair price shop.
2. F.P. Shops should be within a distance of one K.M. from the residence of cardholders.
3. Whether there is need for a separate shop to cover Harijan Basti in the village.
4. In tribal areas F.P. Shops may be created even for 1,000 population.
5. In non-tribal areas, F.P. shops may be opened for every 1,650 populations.
6. The shops must be economically viable.

8. It is observed that in spite of specific guidelines that the shops must be economically viable, recently in some Districts new F.P. shops are being opened and even few cards rendering both the new shop and also the bifurcated shop economically unviable. To obviate the unhealthy trend, the following additional guidelines are issued.

i) In rural areas no new F.P. shops should be sanctioned of the number of cards to be attached to the F.P. shop are less than 350.

ii) In urban areas no new F.P. Shop shall be sanctioned if the number of cards to be attached to the shop is less than 500.

iii) In city areas no new F.P. shop shall be sanctioned if the number of cards to be attached to the shop is less than 800.

9. It is submitted that the cards attached to the shop of the petitioner are only 216 and the F.P. shop is in rural area. No new shop shall be sanctioned since the cards attached to his shop are less than 350. So the creation of new

shop is economically unviable and against the guidelines. Moreover the authorities are under duty to put notice to the petitioner before bifurcating the F.P. shop and the same was not done. In such circumstances, the petitioner approached this Court praying for the reliefs specified above.

10. In the counter affidavit filed on behalf of the first respondent, it is averred that the petitioner M.Jayanna is a fair price shop dealer for Chandoli h/o Pandikona village, Pathikonda Mandal, Kurnool District. The public of Chandoli village filed a petition stating that the petitioner is not distributing the essential commodities to the cardholders properly. The public also gave a petition to the Mandal Revenue Officer, on

10-06-2005 and also represented during the Food Advisory Committee meeting, which was held on 15-07-2005 at Mandal Revenue Office, Pathikonda. The members of the Food Advisory Committee resolved to bifurcate the existing F.P. shop into two fair price shops considering the facts that there is ill feeling between two groups and the F.P. Shop dealer is distributing the essential commodities properly to one group and he is not distributing the essential commodities to other group members properly. To avoid law and order problem in the village and to ensure proper distribution of essential commodities to all the cardholders, proposals were submitted by the Revenue Divisional Officer, Adoni for bifurcation of existing F.P. shop into two F.P. Shops. It is also averred that in view of certain exigencies like there was factions existing and situation has not been healthy, in order to avoid tensions, the Revenue Divisional Officer, Adoni recommended to create additional fair price shop bifurcating the existing fair price shop. The same was also done in view of increase in the cardholders. Further, it is stated that the cardholders had complained that the petitioner is not distributing commodities properly and basing on the complaint of the cardholders and taking into account the factions in the village the shop had been bifurcated. Though the village is a small village, the bifurcation had been made in the interest of smooth distribution, particularly to avoid unnecessary allegations arising out of the political rivalry. Further, specifically, the averment that the bifurcation was made at the behest of the MLA, had been denied. Further it is stated that it is a fact that the existing cards in the village at the time of bifurcation are 217. The Government of Andhra Pradesh issued orders for supply of new cards to the families, which are not having ration cards and issuance of new ration

cards is in progress. As per the survey report, the total cards will be increased to nearly 422 and hence, there is necessity to create an additional fair price shop in the village in the light of the increase of cardholders.

11. The proceedings of the Joint Collector, Kurnool in Rc.CS2/617/2005 dated 16-01-2006 is placed before this Court and the same reads as under:

PROCEEDINGS OF THE JOINT COLLECTOR KURNOOL

PRESENT :Sri R.S.Naik, I.A.S.,

Rc.CS2/617/2005. Dated: 16-01-2006.

Ref: Civil Supplies – Kurnool District – Adoni Division Pathikonda (M) – Chandoli (V) – Creation of additional F.P. Shop duly bifurcating the existing F.P. Shop of Chandoli (V) – Orders – Issued.

Ref: Rc.M.1103/2005, dated 9-11-2005 of Revenue Divisional Officer, Adoni.

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O R D E R:

The Revenue Divisional Officer, Adoni has submitted the proposals for creation of additional F.P. Shop in Chandoli duty bifurcating the existing F.P. Shop at Chandoli H/o Pandikona village of Pathikonda Mandal in the reference read above.

The Revenue Divisional Officer, Adoni has submitted that the Mandal Revenue Officer, Pathikonda has reported that the Chandoli village is faction one and two rival groups are existing while one group headed by Madiga Dandora and another headed by TDP and others. The other group cardholders are facing much difficulty to receive essential commodities and K.Oil from the existing F.P. Shop dealer. Further the Revenue Divisional Officer, Adoni has submitted that on the suggestion of the local MLA, Pathikonda MPP and other cardholders of the village the matter was put before Food Advisory Committee meeting held on
15-7-2005 and the committee has passed resolution for creation of additional F.P. Shop duly bifurcating the existing F.P. Shop at Chandoli H/o Pandikona village. The card position of the existing and proposed F.P. Shop as follows:

Sl.No.	Name of the existing F.P.Shop	White	AAY	Pink	Total
1.	Existing F.P.Shop Card position.	194	22	01	217
2.	After bifurcating card position of the existing F.P.shop	97	11	01	109
3.	Card position of the proposed F.P.Shop	97	11	00	108

Finally the Revenue Divisional Officer, Adoni has recommended the creation of additional F.P. Shop duly bifurcating the existing F.P. Shop for the convenience of the cardholders.

In view of the above it is hereby ordered to create additional F.P. Shop duly bifurcating the existing F.P. Shop of Cahndoli H/o Pandikona village of Pathikonda

Mandal on the grounds that for special reasons like dissidence or faction in a village and certain social tensions between one community and another due to caste or religions conflicts for the convenience of the card holders.

The Revenue Divisional Officer, Adoni is requested to notify the vacancy and appoint the F.P. Shop dealer immediately and report compliance.

(Under orders of the Collector and District Magistrate, Kurnool.)

//t.c.b.o.//

sd/-G.K.Gokhale
for Collector(CS)
Kurnool.

Sd/-
Assistant Supply Officer.

To
The Revenue Divisional Officer, Adoni.
Copy to the District Manager, APSCSC Ltd., Kurnool
for information.
Copy to the Mandal Revenue Officer, Pathikonda.
Copy to the Existence F.P.Shop dealer through Mandal
Revenue Officer, Pathikonda.

12. Likewise, the proceedings of the Revenue Divisional Officer, Adoni in Rc.M.1103/2005 dated 06-05-2006 is also placed before this Court and the same reads as hereunder:

PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER, ADONI
Present: Sri B.R.Eswar,M.A.,

Rc.M.1103/2005 Dated:06-05-2006

Sub: Civil Supplies – Adoni Division- Pathikonda Mandal – Chandoli h/o Pandikona village – Sri G.Ramadas S/o Naganna has been appointed as Fair Price Shop dealer on regular basis – Order Issued – Regarding.

Ref: 1. G.O.Ms.No.19 F&A (CS-II) Dept 08-01-90.
2. Govt. Memo No.15361(CS-IV) 93 dated 13-04-93.
3. G.O.Ms.No.409 F&A(CS-IV) Dated 30-10-93.
4. G.O.Ms.No.671 Food, CS and Consumer affairs (CS-IV) dated 30-11-96.
5. G.O.Ms.No.53 Consumer Affairs Food & CS(CSI) Department dated 08-10-2003.
6. This Office Notification Rc.M.1103/05, Dated 31/03/2006.
7. Applications of the individuals.

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O R D E R:

Consequent to the creation of new fair Price Shop the fair price shop dealership fell vacant on regular basis. In pursuance of the instructions of the Government Orders read above a notification has been published inviting applications from the eligible and interested candidates for filing up the vacancy on regular basis as per reservations rules, fixing the last date for receipt of applications in this office as
18-04-2006 and fixing date for interviews on 24-04-2006 for those who have applied for the post of dealership within stipulated time.

In response to the notification, the following candidates have applied for the post of dealer in time and also attended the interview in this office on 24-04-2006.

1. Sri G.Ramadas S/o Naganna

An interview has been conducted in this office on 24-04-2006 and verified the certificates and recorded the statements of the above applicants. Among the above applicants one Sri G.Ramdas S/o Naganna has faired well and selected to the post of Fair Price Shop. There are no adverse remarks against the candidate for appointment as Fair Price Shop Dealership of Chandoli H/o Pandikona village of Pathikonda Mandal.

Accordingly, I hereby appoint Sri G.Ramdas S/o Naganna as Fair Price Shop Dealer for Shop No.1 of Chandoli H/o Pandikona village on regular basis Under Andhra Pradesh State Public Distribution System (Control) order 2001 as per G.O.Ms.No.53 consumer affairs food and civil supplies (CSI) Department dated 08-10-2003 and as per the instructions of the government issued in the reference read above and subject to the following conditions.

1. He should run the Fair Price Shop.
2. He should abide the rules and regulations in licence and authorization and notification.
3. He should obtain retail kerosene licence from the MRO before remitting D.Ds
4. He should obtain authorization from the Revenue Divisional Officer within 15 days from the date of receipt of appointment orders.
5. He has to remit trade deposit of Rs.3000/- in the shape of D.D. drawn in favour of D.M.APCSC Ltd., Kurnool.
6. He has to purchase NSC worth of Rs.100/- towards security deposit.
7. He has to remit Rs.500/- challans towards authorization fee for two years and for renewal Rs.250/- per year.
8. He has to remit the cost of Essential Commodities allotted in the shape of DDs on or before due date fixed by the Collector.

The Mandal Revenue Officer, Pathikonda is requested to allot the Essential Commodities intended to the Fair Price Shop of Shop No.1 of Chandoli h/o Padikona village of Pathikonda Mandal in faovur of Sri G.Ramadas after issuing necessary licences and to submit proposals for issue of authorization in the prescribed proforma as per Government instructions within 15 days. Failure to obtain authorization he is liable for cancellation of dealership.

//t.c.b.o.//

Sd/-B.R.Eswar,
Revenue Divisional Officer,
Adoni.

Administrative Officer.

To
Sri G.Ramada, S/o Naganna of Chandoli h/o Pandikona village of Pathikonda Mandal.
Copy to the individual.
Copy to the M.R.O., Pathikonda Mandal in triplicate for service and resubmission of the served copy.
Copy to the CSDT, Pathikonda.
Copy to the incharge of the MLS point Pathikonda.
Copy submitted to the Collector (CS) Kurnool for favour of information.
Copy to concerned M.L.A./M.P.

13. In the affidavit filed by respondent No.4 in W.V.M.P.No.2402 of 2006, it is averred that the petitioner did not distribute the commodities to the cardholders of a particular group completely, for which the villagers have made complaints to the concerned authorities. The specific stand taken by the petitioner that all the communities are living very peacefully, amicably, no social caste tensions prevailed and there are no criminal cases against the villagers since more than 15 years is denied. Further it is stated that in fact the petitioner's father was the then fair price shop dealer of Chandoli village and his group killed three persons namely R.Eranna, R.Kesanna and Lingam Chennaiah and the accused were convicted to undergo life imprisonment in S.C.No.191/1987. As such the faction started due to this fair price shop only. Though the fair price shop was allotted to the Schedule Caste candidates, they did not properly distribute the commodities to a particular group. In spite of the complaints by the villagers that they are not getting any commodities as per their quota and some times they were not even getting the commodities completely, the authorities did not respond for the same. Hence the public of Chandoli village finally requested the Mandal Revenue Officer-third respondent on 10-06-2005 and also represented during the Food Advisory Committee meeting, which was held on 15-07-2005 at Pathikonda to solve the problem. Having considered that the village is a faction village and the criminal cases between two groups, the Joint Collector, Kurnool-first respondent resolved to bifurcate the existing fair price shop into two fair price shops vide Rc. CS2/617/2005 date 16-01-2006. In pursuance of the same, the fourth respondent made an application to the second respondent requesting to consider his candidature for appointment as fair price shop dealer in the newly established fair price shop as he is unemployed and passed 10^{th} class, which is a requisite educational qualification. Having

considered the qualifications, the second respondent appointed the fourth respondent as fair price shop dealer of Chandoli village by order dated 06-05-2006 in Rc.M. 1103/2005. Since then he has been working as fair price shop dealer and the same was within the knowledge of the petitioner. But peculiarly, having kept quite for five months, the writ petitioner filed the present writ petition by making all false allegations without approaching the authorities concerned, the Food Advisory Committee and even preferring an appeal to the Appellate Authority or to the District Collector, if she is aggrieved by the bifurcation. Further, in relation to the news item, it is stated that the petitioner made such statement to focus as if she came to know about the bifurcation of fair price shop of Chandoli village and appointment of fair price shop dealer is all of a sudden without knowing to the public particularly to the petitioner. In fact on the basis of the applications and the complaints made by the villagers of Chandoli to all the respondents and basing on the Food Advisory Committee's resolution, fair price shop of Chandoli was bifurcated on 16-01-2006 and a notification was issued by the second respondent herein inviting the eligible candidates for appointment of Fair Price Shop No.1 of Chandoli village on

31-03-2006. The second respondent having received the applications conducted an interview on 24-04-2006 and informed the fourth respondent that he was selected and issued appointment orders on 06-05-2006. The other averments relating to economic viability and other grounds had also specifically denied. Further, it is averred in para 7 that consequent to the bifurcation of fair price shop of Chandoli village and in pursuance of the notification for appointment of fair price shop dealer to the Fair Price Shop No.1 of Chandoli village, h/o Pandikona village, Pathikonda Mandal, the fourth respondent was selected and got appointed as fair price shop dealer of Fair Price Shop No.1 of Chandoli village vide Rc.M.1103/2005 dated 06-05-2006 issued by Revenue Divisional Officer, Adoni and in pursuance of the said orders, the fourth respondent had been distributing commodities to the cardholders of Fair Price Shop No.1 of Chandoli village. In such circumstances, it is stated that the fourth respondent is also a necessary party to the writ petition and it is needless to say that the application to implead him had been allowed. As already referred to supra, fourth respondent thus was brought on record.

14. Strong reliance was placed on Government Memo No.148 dated 22-01-1999 wherein it was specified as here under:

"If for special reasons like distance or faction in a village or certain social tensions between one community and another due to caste or religions contacts, the Collectors may if they are fully satisfied for sanction of new shops for the benefit of the community, may grant sanction by giving reasons for such sanction of new shops."

15. Apart from this aspect of the matter reliance was also placed on **B.SURESH v. DISTRICT COLLECTOR, NIZAMABAD AND ANOTHER**[2] and **THIRUVEEDHI NAGENDRA RAO'** case referred to supra.

16. In the light of the reasons, which had been well explained in the respective counter affidavits, this Court is satisfied that only in the interest of the public bifurcation was effected. Even otherwise, the writ courts are expected slow in interfering with the bifurcation of the fair price shops.

17. Hence, viewed from any angle, the writ petition is devoid of any merit and accordingly, the same shall stand dismissed. No order as to costs.

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P.S.NARAYANA,J

Date: 11-12–2007

KLP

Note: L.R.copy to be marked.

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[1] 1997 (2) ALD 437

[2] 1997(4)ALT 481